

**SOUTH CAROLINA LAW ENFORCEMENT DIVISION**

4400 BROAD RIVER ROAD  
COLUMBIA, SOUTH CAROLINA 29210

POLICY #: 8.12.10	DATE: 09/01/93	REVISION DATE:
TITLE: IMPLIED CONSENT - BAC DATAMASTER CHECKLIST		PAGE 1 OF 2
RESPONSIBLE AUTHORITY: SPECIAL AGENT IN CHARGE OF FORENSIC SERVICES LABORATORY		
RELATED STANDARDS/STATUTES/REFERENCES: <u>S.C. Code of Laws</u> , Section 56-5-2950 <u>S.C. Code of Laws</u> , Section 50-21-114 <u>S.C. Code of Laws</u> , Section 55-1-100 <u>S.C. Code of Laws</u> , Section 56-1-2130		

**GENERAL PURPOSE:** To set forth policies for the administration of implied consent breath alcohol tests.

**POLICY:** The Division will establish procedures for properly conducting implied consent BAC DataMaster breath alcohol tests.

**SPECIFIC PROCEDURES:** After the subject arrives at the testing site, the test operator will acquire a SLED evidence ticket. The approved ticket is titled, "SOUTH CAROLINA LAW ENFORCEMENT DIVISION Breath Alcohol Analysis Test Report". This form is designated as LAB 006 or Form No. 100190-IC. The operator is not required to maintain any other types of logs or documentation. A copy of every ticket used in an implied consent test, including aborted tests, should be saved. After obtaining a ticket, the operator will proceed with the checklist.

The first statement on the checklist is:

"Subject under arrest for driving under the influence: Violation of 56-5-2930 or 56-5-2945, S.C. Code of Laws 1976, as amended, (ask arresting officer)."

The operator shall check this statement after verifying the information with the arresting officer. If this statement does not apply, then this is a BUI, FUI, CDL, or non-implied consent test.

The second statement on the checklist is:

"Implied Consent Warning: Subject Advised: I must now tell you that the arresting officer has directed me to give you a breath test. I am trained and certified by the South Carolina Law Enforcement Division - SLED - to give this test. You have the right to refuse to take this test. If you refuse to take this test, your privilege to drive in South Carolina must be suspended or denied for ninety days. You have the right to additional, independent tests. Whether you take this breath test or not, you will be given reasonable assistance in contacting a qualified person, of your own choosing, to conduct any additional tests. You will have to pay for any additional tests."

The operator shall read this warning to the subject. If this DUI or Felony DUI charge also involves a CDL violation, the CDL warning should also be read. If the violation relates only to BUI, FUI, or CDL, the appropriate warning should be read instead of the DUI/Felony DUI warning. After the subject has been read this warning, the operator shall check it. The advisement of Miranda Rights is not required before an implied consent test. Reasonable assistance to obtain an independent test shall depend on the circumstances present. If the subject took the breath test, reasonable assistance would normally constitute transporting him/her to a hospital or other medical facility to obtain a sample. If the subject did not take the breath test, reasonable assistance would normally constitute giving him/her the chance to use a telephone to arrange for an independent test. In any case, the required level of reasonable assistance will depend on the totality of the circumstances.

The third statement on the checklist is:

"Subject's mouth checked and any foreign material removed."

The operator shall look inside the subject's mouth and/or ask the subject if he/she has any foreign material and/or removable dental work in his/her mouth. Dental work (removable or permanent) is not considered to be foreign material. Even though the presence of dental work will not affect the breath test when a minimum twenty minute observation is utilized, any removable dental work will be removed as a precaution. Any foreign material and/or removable dental work in the mouth will be removed before the observation period begins. If foreign material and/or removable dental work is removed from the mouth, it is not required that the operator denote what was removed. The checking of this statement verifies that if any foreign material and/or removable dental work was present, it was removed. If a subject intentionally misleads an operator about any foreign material and/or removable dental work, the subject has forfeited his/her right to have it removed. Permanent dental work (such that a dentist is required to safely remove) will be left in the mouth as it will not affect breath test results when an observation period of a minimum of twenty minutes is used. It is not necessary nor required that the mouth be rinsed out if any foreign material and/or dental work is removed, as long as the minimum twenty minute observation period is used.